



August 10, 2020

Via Electronic Filing

Internal Revenue Service
CC:PA:LPD:PR (REG-122345-18)
Room 5203
P.O. Box 7604,
Ben Franklin Station
Washington, DC 20044.

Re: MFA Comments on Proposed Regulation 122345-18, Tax on Excess Tax-Exempt Organization Executive Compensation

Dear Ladies and Gentleman:

Managed Funds Association (“MFA”)¹ appreciates the opportunity to respond to the proposed rules to implement the tax on excess tax-exempt organization executive compensation (the “Proposed Rules”) set out in Section 4960² of the Internal Revenue Code of 1986, as amended (the “Code”). MFA generally supports the provisions in the Proposed Rules that determine whether an officer of an applicable tax-exempt organization (an “ATEO”) or an employee of an organization related to an ATEO will be treated as an “employee” or a “covered employee” of the ATEO for purposes of the excise tax. We believe that the modifications to these definitions in the Proposed Rules as compared to the prior interim guidance will better address circumstances in which ATEOs and related companies structure their employment or compensation arrangements to avoid application of the excise tax without creating disincentives for individuals and businesses to establish or maintain charitable foundations or other philanthropic organizations.

As discussed in our May 3, 2019 letter³ in response to the interim guidance published by the Department of the Treasury (“Treasury”) and the Internal Revenue Service (the “IRS”), we support defining an employee for purposes of the Proposed Rules in a manner consistent with the definition

¹ The Managed Funds Association (MFA) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, North and South America, and many other regions where MFA members are market participants.

² Section references in this letter refer to Code sections, unless otherwise indicated.

³ Available at: <https://www.managedfunds.org/wp-content/uploads/2020/04/MFA-Comment-Letter-on-Excise-Tax-for-Tax-Exempt-Organizations.pdf>

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of employee in Section 3401 and Treasury Regulation § 31.3401(c)-1(f). In addition to being consistent with existing definitions under the Code, we believe that excluding officers of an ATEO who are not paid directly by the ATEO and who provide minor services to the ATEO is consistent with the statutory intent underlying Section 4960 and avoids an overly broad application of the excise tax, particularly when officers of an ATEO also are employees of a related organization. As such, we encourage Treasury and the IRS to adopt the definition of employee in Proposed Rule §53.4960-1(e).

We also support the proposed “limited hours” and “nonexempt funds” exceptions to the definition of “covered employee” in the Proposed Rules. As discussed in our prior letter, we believe that Congress included ATEO’s related organizations within the scope of Section 4960 to address situations when an employee of an ATEO receives remuneration from a related entity for services provided to the ATEO when such remuneration would be subject to Section 4960 if it were paid directly by the ATEO. We agree with the Proposed Rules that this policy concern is not present in circumstances covered by the limited hours and nonexempt funds exceptions. Further, as recognized in the Proposed Rules, the limited hours and nonexempt funds exceptions will facilitate employees of related organizations volunteering their services to an ATEO. Accordingly, we encourage Treasury and the IRS to finalize the limited hours and nonexempt funds exceptions in Proposed Rules § 53.4960-1(d)(2)(ii) and (iii).

MFA and its members appreciate Treasury and the IRS addressing concerns raised in response to the interim guidance and the modifications to the definitions of “employee” and “covered employee” discussed above. If you have any questions regarding any of these comments, or if we can provide further information with respect to these or other issues, please do not hesitate to contact the undersigned at (202) 730-2600.

Respectfully submitted,

/s/ Mark D. Epley

Mark D. Epley
Executive Vice-President & Managing Director,
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/s/ Benjamin Allensworth

Benjamin Allensworth
Managing Director & Counsel,
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